England / Wales NHS Cross-border Healthcare Services: Statement of values and principles

1) This Statement sets out the values and principles agreed between the NHS in Wales and the NHS in England to ensure smooth and efficient interaction between both bodies for patients along the England-Wales border, in the interests of supporting better patient outcomes and avoiding the fragmentation of care.

2) This document recognises the differences in the respective countries' legislation[1] and rights of patients. Whilst this document is not legally binding in a court of law, both countries are committed to delivering high quality care in keeping with the principles set out in this document and recognise that English and Welsh residents are legally entitled to be treated in accordance with the rights of their country of residence.

3) Both countries will act in the best interest of patients at all times, and there will be no delay in accessing healthcare services whilst commissioning responsibilities are clarified.

4) Each country recognises that there are different NHS bodies with different accountability structures in place on either side of the border.

5) The operational detail of how this will work in practice and the areas affected along the England Wales border are covered in Appendix 1

6) The safety and well-being of patients is paramount. The overriding principle of this statement is that no treatment will be refused or delayed due to uncertainty or ambiguity as to which body is responsible for funding an individual's healthcare provision.

Legal Rights and Standards for Residents in Defined Border Areas

7) Cross-border healthcare services will need to adhere to the regulations contained within the Equality Act 2010 (for both England and Wales) and the Public Sector Equality Duty.

8) In relation to patients residing along the England-Wales border as defined in

   Appendix 1:

[1] https://www.gov.uk/government/publications/the-nhs-constitution-for-england, http://www.legislation.gov.uk/ukpga/2006/42/pdfs/ukpga_20060042_en.pdf, http://www.legislation.gov.uk/anaw/2015/2/contents/enacted, http://www.legislation.gov.uk/anaw/2014/4/contents/enacted

a) For patients resident in Wales who are registered with a GP practice under contract to NHS England, legal responsibility for commissioning or for planning and securing their healthcare will remain with their LHB. However, the CCG that includes their GP practice (or for military, specialised and offender health, NHS England) will commission and pay for health services for those residents on the LHB's behalf.

b) For patients resident in England and registered with a GP practice under contract to a Local Health Board in Wales, legal responsibility for commissioning or for planning and securing their healthcare will remain with their CCG. However, the LHB will commission and pay for health services for those residents on the CCG's behalf.

c) Local health boards in Wales commission specialised services through a statutory joint committee known as the Welsh Health Specialised Services Committee (WHSSC). This includes specialised individual patient funding requests. All references to local health boards in this document should be construed as referring to the WHSSC where specialised services are to be commissioned. The services regarded as specialised in Wales are available at the WHHSC website.[2]

9) The Referral Assessment Service (RAS) acts as a single point of contact, used when referring English resident cross border patients (who are registered with GP practices who have opted into the service) for consultant-led secondary care (Community services, Mental Health and Urgent Suspected Cancer referrals not currently included). NHS England will be responsible for facilitating border GP practices accessing the RAS working in partnership with Welsh Government. The operational costs of the RAS is funded by NHS England and all parties agree that the RAS:

- Will be the referral process for English residents in those border Welsh GP practices that have agreed to use the RAS
- Will be maintained whilst this Statement of Values and Principles applies

10) Further operational detail on the RAS is set out in Appendix 1.

11) English resident patients whose border GP practice has not opted into the RAS have the same legal right to access NHS England services as those English resident patients whose GP practice has opted into the RAS. If an English resident patient wishes to exercise this right and their GP practice has not opted into the RAS, their local CCG must find a GP under contract to NHS England for the patient to transfer to as soon as possible in order to access NHS England services.

12) Any dispute which arises will be dealt with in accordance with the Dispute

[2] http://www.whssc.wales.nhs.uk/services

Resolution Process set out in Appendix 3.

Information sharing and operational principles

13) All organisations will share information where appropriate in a timely manner to inform good decision-making, support healthcare and minimise risk to patients. All organisations will act in accordance with legal duties relating to information sharing.

14) NHS emergency care will be available for all patients without regard to the border.

15) Local NHS bodies will work together through their local Emergency Planning / Emergency Preparedness, Resilience and Response (EPRR) teams (or the equivalent in Wales) to ensure arrangements for Civil Contingency and Emergency Response planning along the border are mutually supportive.

16) People involved in cross-border healthcare, including GPs, patients, CCGs and LHBs, advocate organisations, other clinicians and statutory patient representative groups will have easy access to information. This will include information leaflets provided at GP practices and information on the websites of all bodies involved in cross border care. This will include information for English resident patients on how to register with a GP practice under contract to NHS England in order to access NHS England services as soon as possible.

17) Health professionals' and patients' organisations will cooperate to ensure that information to patients on cross-border healthcare is clear, patient-centred and easy to understand.

18) Cross border issues will be taken into consideration in the development of any relevant future service reconfiguration, including statutory duties of consultation. This will be monitored by a representative body of Welsh Government, NHS England, LHBs, CCGs and statutory patient representative groups.

19) In developing and implementing proposals for changes to NHS services and structures, regard will be given to the impact on healthcare delivery along the border. Public engagement will involve all groups affected.

Financial principles

20) Different financial regimes in operation on either side of the border will not create inappropriate barriers to patient care; see Appendix 2 as to how adjustments will be made. There will be appropriate engagement prior to changes so that any potential impact can be identified and addressed.

21) Both countries are committed to the principle that no treatment will be refused or delayed due to uncertainty or ambiguity as to which body is responsible for

funding an individual's healthcare provision, or due to differing rules as to the level of services available under each country's health system.

Changes to Statement and Review

22) The operational annexes of this statement will be reviewed on an annual basis by a representative body of Welsh Government, NHS England, LHBs, CCGs and statutory patient representative groups to assess whether they are delivering the legal rights and values set out in the statement.

23) The overarching Statement of values and principles will be reviewed 3 years from the date of implementation. The purpose of this review will be to assess whether the Statement has been effective in providing cross-border patients with their legal rights in accordance with the respective countries' legislation and to ensure that cross border patient care is operating effectively without placing undue administrative burden on LHBs or CCGs.

24) The Statement and the annexes can be reviewed at any time in line with changing operational and legal requirements. Any changes required to the operational appendix will be agreed by a representative body of Welsh Government, NHS England, LHBs, CCGs and statutory patient representative groups. Any changes to the statement will be recommended by this representative body and agreed by the Welsh Government and NHS England.

Appendix 1

Operational detail in relation to patients resident in border areas

Applicability

1) Under section 13O(1) of the National Health Service Act 2006 (as amended by section 23 of the Health and Social Care Act 2012), for patients resident in England who are registered with a Welsh GP practice, legal responsibility for commissioning or for planning and securing their secondary healthcare lies with their local clinical commissioning group (CCG), NHS England and Public Health England (PHE). However, the local health board (LHB) will for those English patients secure, pay for and provide secondary and specialised healthcare services for those residents.

2) For patients resident in Wales who are registered with an GP practice under contract to NHS England, legal responsibility for commissioning or for planning and securing their healthcare will remain with their LHB. However, the CCG that includes their GP practice (or for military, specialised and offender health, NHS England) will be responsible, on the LHB's behalf, for commissioning and paying for healthcare services for those residents

3) The following table defines the areas along the England Wales border to which the arrangements in paragraphs 1 and 2 above apply:

Areas of Wales bordering England	Clinical Commissioning Groups bordering Wales
Flintshire Wrexham Powys Monmouthshire Denbighshire	NHS West Cheshire NHS Shropshire NHS Gloucestershire NHS Herefordshire NHS South Cheshire, NHS Wirral NHS Telford and Wrekin

NB: these do not co-relate geographically

4) For the purposes of this document, border patients are those residents living along the England and Wales border (as set out above) who are also registered with a GP practice contracted to the neighbouring cross border county. For patients resident elsewhere in England or Wales who are registered with a GP on the other side of the border, responsibility for commissioning, planning, securing and paying for their healthcare will remain with the CCG or LHB area where the patient defines his or her usual place of residence[3]. The statutory and policy framework sets out the responsible

[3] https://www.england.nhs.uk/wp-content/uploads/2014/05/who-pays.pdf

commissioner for specific patients subject to the Mental Health Acts and the Children Acts.

5) LHB's in Wales have a statutory responsibility to take reasonable steps to provide healthcare that meets the needs of their local populations in accordance with the NHS (Wales) Act 2006, the Well-being of Future Generations (Wales) Act 2015 and Social Services and Wellbeing (Wales) Act 2014. They achieve this by either directly providing healthcare or by commissioning healthcare from other service providers.

6) In addition, the Welsh Health Specialised Services Committee (WHSSC), working on behalf of all Health Board's in Wales, commissions a number of more specialised services at a national level which fall outside of the remit of the RAS. Patients registered with a GP in Wales who are resident in Wales do not have a statutory right to choose which hospital they are referred to. Consequently, these patients should not be able to access healthcare services elsewhere unless all treatment options available within locally provided services or those commissioned by Health Boards have been exhausted and it is clinically appropriate to do so. A request for routine treatment outside of local services or established contractual arrangements would always be subject to a prior approval process.

Such a request may fall within one of the following categories:-

- Second opinion
- Lack of local/commissioned service provision/expertise
- Clinical continuity of care (considered on a case by case basis)
- Transfer back to the NHS following self-funding in the private sector
- Re-referral following a previous tertiary referral
- Students
- Veterans

7) For instances where funding is required for NHS healthcare for individual patients who fall outside the range of services and treatment that a Health Board has arranged to routinely provide, the Individual Patient Funding Request (IPFR) Policy route should be followed. Such a request would normally fall within one of the following categories;

    - A patient requires a treatment which is new, novel, developing or unproven and is not within the Health Board's routine schedule of services and treatment,
    - A patient requires a treatment which is outside of existing clinical policy criteria,
    - A treatment is required for a patient with a rare or specialist condition and is not eligible for treatment in accordance with the clinical policy criteria.

8) Individual Patient Funding Requests and other forms of prior approval will not be required for emergency or immediately necessary treatment.

9) Clinical commissioning groups (CCGs), established under the Health and Social Care Act 2012, are statutory bodies which have the function of commissioning services for the purposes of the health service in England and are treated as NHS bodies for the purposes of the National Health Service Act 2006. The duties of clinical commissioning groups to commission certain health services are set out in section 3 of the 2006 Act, and amended by section 13 and 14 of the 2012 Act.

10) As in Wales, some services that provide care for rare or highly complex conditions are commissioned centrally by NHS England. Factors which determine whether NHS England directly commission a service include:

- The number of individuals who require the service;
- The cost of providing the service or facility;
- The number of people able to provide the service or facility and
- The financial implications for CCGs if they were required to arrange for provision of the service or facility themselves

11) In England, an Individual Funding Request (IFR) can be made for a treatment or service which is not routinely available from the NHS. This may include treatments which are very new, or where there is limited evidence that the treatment is clinically or cost effective. Each CCG will publish their Exceptional Clinical Circumstances policies, which indicate where an IFR or Prior Approval is required. Prior Approval requests relate to procedures that are funded, but which are subject to the patient meeting pre-defined thresholds for treatment.

12) NHS England has a duty when making commissioning decisions, to have regard to the likely impact of these decisions on the provision of health services to persons who reside in an area of Wales that is close to the border with England. The NHS in Wales will be expected to operate on the same basis in relation to actions affecting persons who reside in an area of England that is close to the border with Wales.

13) The following tables summarise what border patients should be able to expect in terms of standards for access to non-specialised and specialised healthcare depending on residency, referral pathway, GP location and provider. Standards should be taken to include clinical thresholds for treatment and other referral criteria specified by the CCG or LHB:

Patient's Residency	GP Registration	Legally Responsible Body	Patient referred by	English Provider	Welsh Provider
Wales	Wales	LHB	GP	NHS Wales Standards	NHS Wales Standards
England	Wales	CCG	GP via RAS	NHS England Constitution	NHS Wales Standards
England	Wales	CCG	GP referral other than via RAS	NHS England Constitution	NHS Wales Standards
England	England	CCG	GP	NHS England Constitution	NHS Wales Standards
Wales	England	LHB	GP	NHS England Constitution	NHS Wales Standards

Nationally commissioned specialised services

14) Although these services do not go through the RAS, English resident patients have a right to access NHS England specialised services in accordance with the NHS England constitution. The following table sets out the arrangements in place regarding access to specialised services

Patient's Residency	GP Registration	Patient referred by	Legally Responsible Body	Body which will pay for patient's care	English Provider	Welsh Provider
Wales	Wales	GP	LHB	WHSSC (on behalf of LHB)	NHS Wales Standards	NHS Wales Standards
England	Wales	GP via RAS	NHSE	LHB via WHSSC	NHS England Constitution	NHS Wales Standards
England	Wales	GP referral other than via RAS	NHSE	NHSE	NHS England Constitution	NHS Wales Standards
England	England	GP	NHSE	NHSE	NHS England Constitution	NHS Wales Standards
Wales	England	GP	LHB	NHSE	NHS	NHS

					England Constitution	Wales Standards

Referral Assessment Service

15) The RAS is a referral system, managed by Shropshire CCG, to enable English residents (registered with a Welsh GP practice) choice of secondary care provider in England or to be referred back to NHS Wales. The RAS acts as a single point of contact for Welsh border GP practices when referring English cross-border patients into England for consultant-led secondary care (Community services, Mental Health and Urgent Suspected Cancer referrals not currently included). The RAS offers English residents the choice of secondary care in England in line with NHS Constitutional rights or to be referred back to NHS Wales to be treated under Welsh standards.

16) NHS England will be responsible for facilitating GP practices accessing the RAS, working in partnership with the Welsh Government.

17) If referred via the RAS into services provided in England, these patients will be included in the English provider data sets provided to the Welsh LHBs.

Managing Cross-border Services

18) A representative body of Welsh Government, NHS England, LHBs and CCGs will work together to create and manage mechanisms for identifying and managing cross border issues.

19) Local NHS bodies will work together to ensure arrangements are in place so that bodies engage populations across the border in discussions on quality and changes to services provided.

20) Cross-border NHS-funded care in residential care homes in Wales and England is based on the care homes' location. CCGs should refer to the responsible commissioner guidance, *'Who Pays? Determining Responsibility for Payment to Providers*, and NHS bodies within Wales to the definition set out in the *Responsible Body Guidance. https://www.england.nhs.uk/wp-content/uploads/2014/05/who-pays.pdf. Amendments to this document were made in 2016. https://www.adass.org.uk/media/5173/updated-s117-who-pays-guidance-applicable-from-1st-april-2016.pdf.*

21) Where a CCG or LHB arranges a package of NHS Continuing Healthcare (CHC), (other than a package that is only NHS funded nursing care), the placing body will remain responsible for that person's CHC until that episode of care has ended.

Appendix 2

Transfer of funds

1) The aim of this Statement is that there will be no financial shortfall on the part of any LHB or CCG in providing healthcare services to the other country's residents in accordance with their legal rights.[4]

2) In acting in accordance with this Statement the responsible LHBs and CCGs will be appropriately funded to commission healthcare services for the other country's residents. A timely and appropriate transfer of funds will occur between the Welsh Government/LHBs and Department of Health/NHS England/CCGs, based on the existing methodology of reimbursement on the current per capita basis for the net difference in primary care registrations between England and Wales.

3) There are around 21k English residents registered with Welsh GPs, and 15k Welsh residents registered with English GPs. Each country initially pays for all secondary care costs from primary care referrals, whether English or Welsh residents.

4) At the end of each financial year England makes a transfer of funds to Wales which notionally relates to the cost of all secondary care for the 6k net "extra" English residents who are registered with Welsh GPs.

5) The settlement figures are based on average numbers of cross border GP registrations, and average costs of secondary care per capita in both countries. The respective values have been reviewed a number of times since 2007-08, the growth in health spending in both countries means the current settlement figure of £5.8m remains appropriate.

[4] https://www.gov.uk/government/publications/the-nhs-constitution-for-england

Appendix 3 - Dispute Resolution Process for NHS commissioners for disputes relating to treatment of patients

This section applies to disputes between NHS commissioners either side of the border between England and Wales.

The following dispute resolution process sets out the steps which must be followed if agreement between the LHB or WHSSC in Wales and the CCG in England cannot be reached. The following principles will apply whilst a dispute is underway:

- Any financial dispute will not interfere with the commencement of the patient's treatment.
- The commissioning body of the patient remains legally responsible for the patient's care whilst the dispute is underway
- The referral date will continue to be the point at which the patient was referred by the Primary Care provider and not the date of the dispute.
- Should the patient wish to complain about the treatment/services they have been given they will do this through the relevant NHS complaints procedure[5]
- No providers of NHS services in England or Wales will be financially disadvantaged once the dispute has been resolved

Stage in Process	Maximum timescale
Stage 1. Local resolution The LHB or Welsh Health Specialised Services Committee and the CCG must try to reach an agreement locally on which is the responsible body using the joint guidance from WG and NHS England. All reasonable efforts must be made by officers (escalating to chief officers and finally to Chairs if necessary) of the LHB or WHSCC and CCG to reach agreement locally. This can include choosing to either: • agree to fund the patients treatment on a 50/50 basis; or • the host provider will pay the cost of treatment If this occurs, a financial adjustment will be made once the dispute has been resolved to ensure the provider identified to pay the treatment has not been financially disadvantaged.	Week 3
Stage 2. Resolution at HSSG Director / NHS England Regional Directors of Operations and Assurance level = In exceptional circumstances, the LHB/WHSSC and the CCG Chief Officers may conclude that they cannot reach local agreement and	Week 8

[5] https://www.nhs.uk/nhsengland/complaints-and-feedback/pages/nhs-complaints.aspx

so decide to refer on to the relevant Director of the Health and Social Services Group in the Welsh Government (HSSG) and the Regional Directors of Operations and Assurance of NHS England. The joint submission should provide the following information: • a background summary of the patient's case • confirmation that the patient's care is not at risk • who is currently taking responsibility for the patient • the reason why the commissioner/healthcare planners are in disagreement as to who is responsible for funding the patient's healthcare; and • what has been done to try and resolve matters. Discussion will take place between the HSSG Director and the NHS England Regional Directors of Operations and Assurance to resolve the issue based on the facts and guidance. The decision will be final and binding on both commissioner/health care planner. A joint letter advising of the decision will be issued to both.	
Stage 3. National Level In the extraordinary event of an agreement not being reached between the HSSG Director and the NHS England Regional Directors of Operations and Assurance by week 10, guidance should be sought from the Chief Executive of the NHS in Wales and the National Director of Operations of NHS England in England. Through their teams, both the Chief Executive and National Director will liaise with one another to agree the policy interpretation for the case and provide joint advice to both the HSSG Director and NHS England Regional Directors of Operations and Assurance to ensure a resolution is achieved.	Week 14